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HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GABRIEL ORTIZ, ANDREW GONZALES,  
LANDON MICKEY MILLER, AND JOE  
HUYNH, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

Case No. C 09-03485 LHK

**STIPULATION AND JOINT REQUEST  
TO MODIFY CASE MANAGEMENT  
ORDER; KONECKY DECLARATION  
IN SUPPORT; ~~PROPOSED~~ ORDER**

[Fed. R. Civ. P. 26(f), Civ. L.R. 6-1(b), 6-2,  
7-12.]

The Honorable Lucy H. Koh

1 The parties request approval of a stipulation for a modest continuance of the deadlines for class  
2 certification expert disclosure and rebuttal class certification expert disclosure in order to facilitate  
3 settlement discussions before the Honorable Edward A. Infante (ret.). The stipulated extension  
4 requires no modification of the deadlines for the class certification motion or any other deadlines set by  
5 the Court.

6 On May 9, 2011, the parties and counsel made substantial progress in their second mediation  
7 session before Judge Infante, and are continuing discussions through Judge Infante. The parties are  
8 scheduled to appear before the Court for a Case Management Conference to report on the status of the  
9 settlement discussions on May 25, 2011.

10 The current deadline for class certification expert disclosure is May 13, 2011, and the current  
11 deadline for the rebuttal disclosure is June 17, 2011. The deadline for filing the class certification  
12 motion is July 14, 2011, with the Opposition due by August 25, 2011, the reply due by September 15,  
13 2011, and the hearing set for September 29, 2011. The date for trial is April 23, 2012.

14 In order to focus their resources on attempting to complete a settlement, the parties stipulated to  
15 extend the expert disclosure date from May 13 to June 10, 2011, and the rebuttal expert disclosure date  
16 from June 17 to July 15, 2011. The parties submit that this stipulated extension has and will continue  
17 to facilitate settlement negotiations and that it will not result in a need to continue other scheduled  
18 dates should the case not settle, and therefore that there is good cause for the extension.

19 On January 26, 2011, the Court issued a scheduling order modifying the pretrial schedule  
20 originally set by the Honorable James Ware in his order of February 25, 2010. Since the January 26,  
21 2011 Order, the parties sought one other modification of the pretrial schedule: the parties stipulated to  
22 extend the date for taking a Rule 30(b)(6) deposition for approximately one month. The deposition  
23 was taken on the newly agreed upon date.

24 A declaration from Joshua Konecky in support of this request is enclosed.  
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1 Dated: May 13, 2011

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Rachael Langston  
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4 Joshua Konecky  
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5 COTTRELL BRAYTON  
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6  
7 /s/ Joshua Konecky

JOSHUA KONECKY

8 Attorneys for Plaintiffs  
9 Gabriel Ortiz, Andrew Gonzales, Landon Mickey  
Miller, and Joe Huynh

10  
11 Dated: May 13, 2011.

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Donald Livingston  
William Allen  
Teresa W. Ghali

14  
15 /s/ Bill Allen

16 BILL ALLEN

17 Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

18  
19 **ECF CERTIFICATION**

20 Pursuant to General Order No. 45 X. (B), I attest that concurrence in the filing of this  
21 document has been obtained from Defendant's counsel.

22 Dated: May 13, 2011.

23 /s/ Joshua Konecky

JOSHUA KONECKY

**DECLARATION OF JOSHUA KONECKY**

I, Joshua Konecky, declare,

1. I am an attorney in good standing licensed to practice in the Northern District of California and am attorney of record in *Ortiz v. Home Depot U.S.A., Inc.*, Case No. C 09-03485 LHK (N.D. Cal.). I make this declaration based on my own personal knowledge and, if called to do so, could and would competently so testify in court.

2. On May 9, 2011, the parties and counsel made substantial progress in their second mediation session before Judge Infante and are continuing discussions through Judge Infante. The parties are scheduled to appear before the Court for a Case Management Conference to report on the status of the settlement discussions on May 25, 2011.

3. In order to focus their resources on attempting to complete a settlement, the parties stipulated after the mediation session to extend the expert disclosure date from May 13 to June 10, 2011, and the rebuttal expert disclosure date from June 17 to July 15, 2011. This stipulated extension has facilitated settlement negotiations and we believe that it will continue to do so.

4. The parties and counsel do not believe that the continuance of expert disclosure deadlines and reports will impact their ability to meet the current discovery and motion practice deadlines.

5. In addition to the Case Management Order entered on January 26, 2011 (*see* dkt. No. 50), the following time modifications have been made by the Court, upon motion or by stipulation: (1) plaintiffs' motion for continuance of Case Management Conference (*see* dkt. no. 10); (2) stipulation to extension of time for Defendant to file answer to amended complaint (*see* dkt. no. 13); (3) stipulation to extend time for mediation (*see* dkt. no. 36); and (4) stipulation to extend time for taking Rule 30(b)(6) deposition (*see* dkt. No. 36).

6. Defendant's counsel Bill Allen has authorized Plaintiffs' counsel to sign the joint motion on her behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of May, 2011, in San Francisco, CA.

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1  
2 The parties stipulate that the expert disclosure date of May 13, 2011, can be extended to June  
3 10, 2011, and the rebuttal expert disclosure date of June 17, 2011, can be extended to July 15, 2011.

4 PURSUANT TO STIPULATION, IT IS SO ORDERED this 17th day of May, 2011.

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7 THE HON. LUCY H. KOH  
8 United States District Judge  
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